

**§ 1.453-4**

**26 CFR Ch. I (4-1-05 Edition)**

stock or obligation, into which an obligation is convertible, is readily tradable or designed to be readily tradable in an established securities market, the rules stated in paragraph (d) of this section shall apply, and for purposes of such paragraph (d) if such obligation is convertible into stock then the term "stock" shall be substituted for the term "obligation" wherever it appears in such paragraph (d).

(2) *Substantial discount rule.* Whether an obligation is convertible at a substantial discount depends upon the particular facts and circumstances. A substantial discount shall be considered to exist if at the time the convertible obligation is issued, the fair market value of the stock or obligation into which the obligation is convertible is less than 80 percent of the fair market value of the obligation (determined by taking into account all relevant factors, including proper discount to reflect the fact that the convertible obligation is not readily tradable in an established securities market and any additional consideration required to be paid by the taxpayer). Also, if a privilege to convert an obligation into stock or an obligation which is readily tradable in an established securities market may not be exercised within a period of 1 year from the date the obligation is issued, a substantial discount shall be considered to exist.

(f) *Effective date.* The provisions of this section shall apply to sales or other dispositions occurring after May 27, 1969, which are not made pursuant to a binding written contract entered into on or before such date. No inference shall be drawn from this section as to any question of law concerning the application of section 453 to sales or other dispositions occurring on or before May 27, 1969.

[T.D. 7197, 37 FR 13532, July 11, 1972]

**§ 1.453-4 Sale of real property involving deferred periodic payments.**

(a) *In general.* Sales of real property involving deferred payments include (1) agreements of purchase and sale which contemplate that a conveyance is not to be made at the outset, but only after all or a substantial portion of the selling price has been paid, and (2) sales in

which there is an immediate transfer of title, the vendor being protected by a mortgage or other lien as to deferred payments.

(b) *Classes of sales.* Such sales, under either paragraph (a) (1) or (2) of this section, fall into two classes when considered with respect to the terms of sale, as follows:

(1) Sales of real property which may be accounted for on the installment method, that is, sales of real property in which (i) there are no payments during the taxable year of the sale or (ii) the payments in such taxable year (exclusive of evidences of indebtedness of the purchaser) do not exceed 30 percent of the selling price, or

(2) Deferred-payment sales of real property in which the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the sale is made exceed 30 percent of the selling price.

(c) *Determination of "selling price".* In the sale of mortgaged property the amount of the mortgage, whether the property is merely taken subject to the mortgage or whether the mortgage is assumed by the purchaser, shall, for the purpose of determining whether a sale is on the installment plan, be included as a part of the "selling price"; and for the purpose of determining the payments and the total contract price as those terms are used in section 453, and §§ 1.453-1 through 1.453-7, the amount of such mortgage shall be included only to the extent that it exceeds the basis of the property. The term "payments" does not include amounts received by the vendor in the year of sale from the disposition to a third person of notes given by the vendee as part of the purchase price which are due and payable in subsequent years. Commissions and other selling expenses paid or incurred by the vendor shall not reduce the amount of the payments, the total contract price, or the selling price.

[T.D. 6500, 25 FR 11715, Nov. 26, 1960]

**§ 1.453-5 Sale of real property treated on installment method.**

(a) *In general.* In any transaction described in paragraph (b)(1) of § 1.453-4, that is, sales of real property in which

there are no payments during the year of sale or the payments in that year do not exceed 30 percent of the selling price, the vendor may return as income from each such transaction in any taxable year that proportion of the installment payments actually received in that year which the gross profit (as described in paragraph (b) of §1.453-1) realized or to be realized when the property is paid for bears to the total contract price. In any case, the sale of each lot or parcel of a subdivided tract must be treated as a separate transaction and gain or loss computed accordingly. (See paragraph (a) of §1.61-6.)

(b) *Defaults and repossessions*—(1) *Effective date.* This paragraph shall apply only with respect to taxable years beginning before September 3, 1964, in respect of which an election has not been properly made to have the provisions of section 1038 apply. For rules applicable to taxable years beginning after September 2, 1964, and for taxable years beginning after December 31, 1957, to which such an election applies, see section 1038, and §§1.1038-1 through 1.1038-3.

(2) *Gain or loss on reacquisition of property.* If the purchaser of real property on the installment plan defaults in any of his payments, and the vendor returning income on the installment method reacquires the property sold, whether title thereto had been retained by the vendor or transferred to the purchaser, gain or loss for the year in which the reacquisition occurs is to be computed upon any installment obligations of the purchaser which are satisfied or discharged upon the reacquisition or are applied by the vendor to the purchase or bid price of the property. Such gain or loss is to be measured by the difference between the fair market value at the date of reacquisition of the property reacquired (including the fair market value of any fixed improvements placed on the property by the purchaser) and the basis in the hands of the vendor of the obligations of the purchaser which are so satisfied, discharged, or applied, with proper adjustment for any other amounts realized or costs incurred in connection with the reacquisition.

(3) *Fair market value of reacquired property.* If the property reacquired is bid in by the vendor at a foreclosure sale, the fair market value of the property shall be presumed to be the purchase or bid price thereof in the absence of clear and convincing proof to the contrary.

(4) *Basis of obligations.* The basis in the hands of the vendor of the obligations of the purchaser satisfied, discharged, or applied upon the reacquisition of the property will be the excess of the face value of such obligations over an amount equal to the income which would be returnable were the obligations paid in full. For definition of the basis of an installment obligation, see section 453(d)(2) and paragraph (b)(2) of §1.453-9.

(5) *Bad debt deduction.* No deduction for a bad debt shall in any case be taken on account of any portion of the obligations of the purchaser which are treated by the vendor as not having been satisfied, discharged, or applied upon the reacquisition of the property, unless it is clearly shown that after the property was reacquired the purchaser remained liable for such portion; and in no event shall the amount of the deduction exceed the basis in the hands of the vendor of the portion of the obligations with respect to which the purchaser remained liable after the reacquisition. See section 166 and the regulations thereunder.

(6) *Basis of reacquired property.* If the property reacquired is subsequently sold, the basis for determining gain or loss is the fair market value of the property at the date of reacquisition, including the fair market value of any fixed improvements placed on the property by the purchaser.

[T.D. 6500, 25 FR 11716, Nov. 26, 1960, as amended by T.D. 6916, 32 FR 5923, Apr. 13, 1967]

**§ 1.453-6 Deferred payment sale of real property not on installment method.**

(a) *Value of obligations.* (1) In transactions included in paragraph (b)(2) of §1.453-4, that is, sales of real property involving deferred payments in which the payments received during the year of sale exceed 30 percent of the selling price, the obligations of the purchaser